



C: Deputy City Manager, Wynter C. Benda

To the Honorable Council  
City of Norfolk, Virginia

June 9, 2015

From: Wynter C. Benda, Deputy City Manager

**Subject:** Ordinance to Approve a Docking Agreement with Rover Marine, Inc. for use of a Portion of the City's Municipal Dock to berth the vessel Victory Rover

Reviewed:

Ronald H. Williams, Jr., Deputy City Manager

**Ward/Superward:** 2/6

Approved:

Marcus D. Jones, City Manager

**Item Number:**

**PH-2**

I. **Recommendation:** Adopt Ordinance

II. **Applicant:** Rover Marine, Inc.  
P.O. Box 3125  
Norfolk, VA 23514

III. **Description:**

This agenda item is authorizing a Docking Agreement between the City of Norfolk and Rover Marine, Inc. for use of a portion of the City's Municipal Dock located 15-feet east of the War Memorial in Town Point Park to berth the vessel Victory Rover. This is docking space from which tour passengers go on board and disembark onto shore. The term of the Docking Agreement is for five years commencing 30-days following Council's approval of the Ordinance.

IV. **Analysis**

This Docking Agreement provides docking space for the vessel Victory Rover for regular passenger sightseeing tours to the naval base. This Agreement provides for rental payments made monthly throughout the year. The vessel offers tours during approximately 10 months of the year, taking six weeks in January and February for annual maintenance and repairs. The lease is for a five-year term commencing 30-days after approval by City Council.

V. **Financial Impact**

By the terms of the Docking Agreement, the annual rent is \$6,000.00 to be paid in installments of \$500.00 per month. Nauticus will also receive booking fees.

VI. **Environmental**

There are no known environmental issues related to the Docking Agreement.

VII. **Community Outreach/Notification**

In accordance with the Norfolk City Charter and Virginia state law, a legal notice was posted in *The Virginian-Pilot*. In addition, public notification for the agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. **Board/Commission Action**

N/A

IX. **Coordination/Outreach**

This letter has been coordinated with Nauticus and the Norfolk City Attorney's Office.

05/12/15 tsv

WR

Form and Correctness Approved:

By [Signature]  
Office of the City Attorney

Contents Approved:

By [Signature]  
DEPT.

NORFOLK, VIRGINIA

## ORDINANCE No.

AN ORDINANCE APPROVING THE DOCKING AGREEMENT WHICH AUTHORIZES ROVER MARINE, INC. TO OPERATE ITS VESSEL FROM THE CITY-OWNED BERTHING FACILITIES ON THE ELIZABETH RIVER, IN TOWN POINT PARK.

- - -

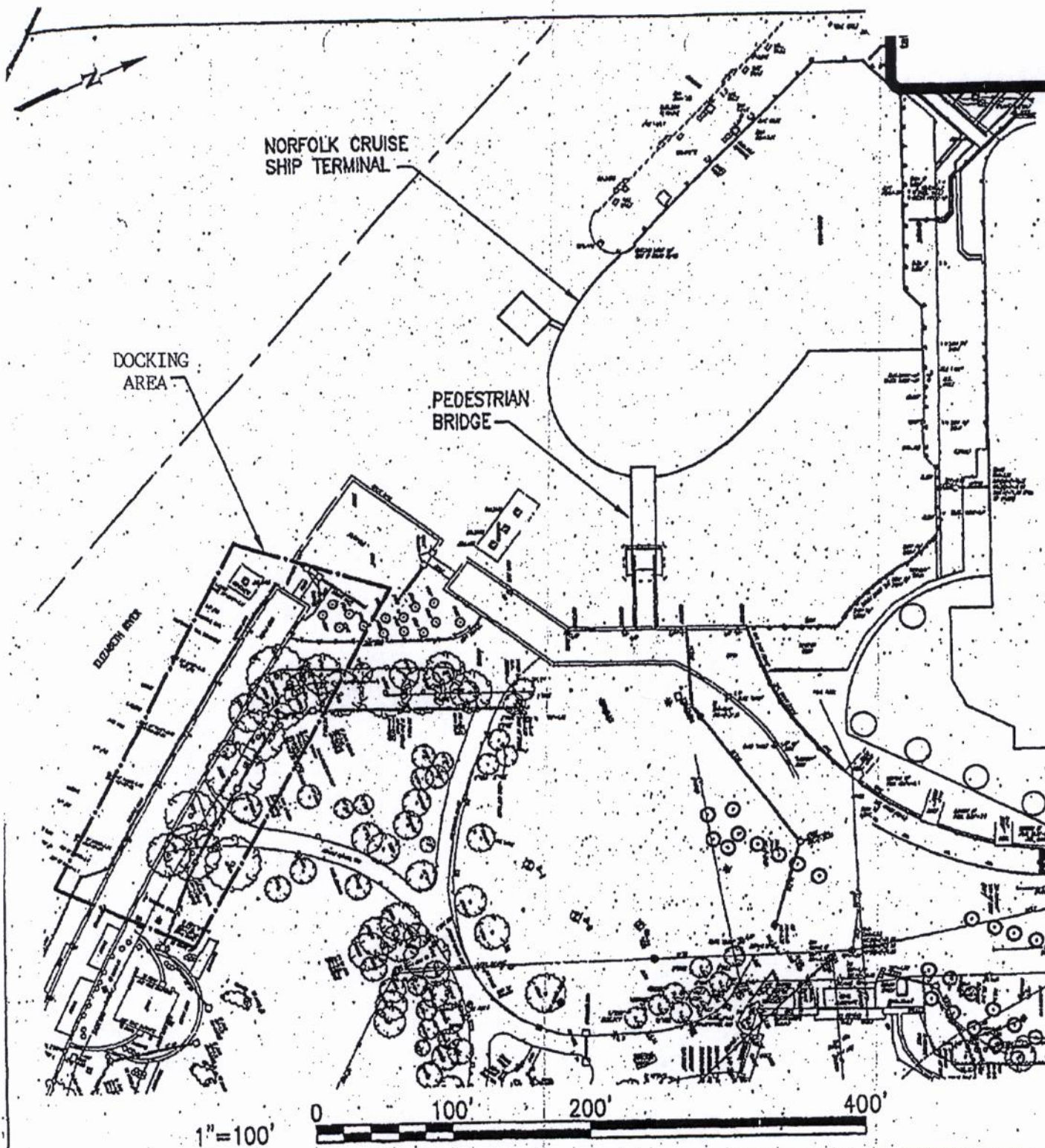
BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That Rover Marine, Inc., is hereby authorized to operate its charter tour and boat from the city owned berthing facilities on the Elizabeth River, such facilities being more specifically shown in Exhibit A attached hereto and made a part hereof.

Section 2:- That the City Manager is authorized to negotiate and execute a Docking Agreement with Rover Marine, Inc., substantially in the same form and terms as shown in Exhibit B, satisfactory to the City Attorney, and consistent with this ordinance.

Section 3:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.





DATUM: NAVD 88  
APPLICANT: CITY OF NORFOLK

VICTORY ROVER  
BERTHING FACILITY

OVERALL SITE PLAN

**CLARK-NEXSEN**  
Architecture & Engineering

6160 KEMPVILLE CIRCLE, SUITE 200A NORFOLK, VIRGINIA

IN: ELIZABETH RIVER

CITY: NORFOLK

DATE: MARCH 28, 2005

SHEET 2 OF 8

This **DOCKING AGREEMENT** entered into the       day of       , 2015 between the **CITY OF NORFOLK**, a political subdivision of the Commonwealth of Virginia ("City") and **ROVER MARINE, INC.**, a Virginia corporation ("Rover Marine") with its address being Post Office Box 3125, Norfolk, Virginia 23514.

**WITNESSETH:**

**WHEREAS**, the City owns berthing facilities for ships and boats; and

**WHEREAS**, Rover Marine is a charter/tour boat operation, licensed to operate tour boats primarily from the Downtown Norfolk waterfront to the Norfolk Naval Base as a public attraction in conjunction with the City's waterfront development; and

**WHEREAS**, Rover Marine is owned by individuals with expertise in the operation of commercial vessels and has appropriate United States Coast Guard ("USCG") approval and State licenses to do so; and

**WHEREAS**, Rover Marine has requested that the City grant Rover Marine the right to use a portion of the City's dock to berth a tour vessel known as the Victory Rover ("the Vessel"); now, therefore,

**WITNESSETH:**

In consideration of the foregoing premises and the mutual covenants herein contained, the parties agree as follows:

1. **PURPOSE AND OPERATION.** Rover Marine shall operate the Vessel, which shall be a tour boat, whose principal operation will be to offer a regular schedule of public naval base cruises from Downtown Norfolk to be approved by the Director of Nauticus (the "Director"). The operation will add another unique attraction to the Downtown waterfront district. The City will receive financial benefits in the form of sales, and property taxes,



dockage fees and parking revenues. In addition, Rover Marine agrees to sell tickets in a location mutually agreeable to the parties. The schedule as agreed upon by both parties — City and Rover Marine is attached hereto as Exhibit A. Any modification of the number of trips, schedules for arrival, departure, rates, etc. will require notification to and approval by the Director.

2. **RIGHTS TO USE OF PREMISES.** The City hereby grants to Rover Marine the right to use a portion of the City's dock to berth the Vessel subject to relocation as set forth hereinafter' (the "Docking Area"), such Docking Area being shown on Exhibit B attached hereto. The Vessel is substantially similar to that depicted in Exhibit D with one enclosed deck. No alterations or improvements will be made to premises by Rover Marine without the express written consent of the City of Norfolk.

Rover Marine shall have the right to act without consent of the City in situations that it determines to be an emergency, for the safety, welfare, and protection of the general public, employees or other persons. Immediately following such action, Rover Marine shall inform the City of the situation and the action taken and shall indemnify the City in accordance with paragraph 11 herein.

Rover Marine shall, at its own cost and expense, provide all boarding ramps, gear and labor for the docking and mooring of the Vessel at said premises and shall provide, at its own cost and expense, such appliances as it may require for the handling of passengers in accordance with USCG regulations. Rover Marine shall provide adequate and safe storage for any ramps, gear or other equipment necessary for the boarding or disembarking of passengers. No equipment, gear, supplies or other property shall be stored on the docks or in the waterfront area without the express written consent of the Director;

The City shall provide electrical service, fresh water, sanitary sewer connections, and make its trash receptacle/compactor available for usage by the Vessel. One (1) parking space, on site, will be designated for use by the Vessel.

The City will grant reasonably lighted ingress and egress to the Docking Area for the Vessel and its passengers and other invitees. Such access shall remain subject to appropriate regulations issued by the City.

The City reserves the right to use all areas in its waterfront facilities. In addition, it is expressly understood and agreed by the parties that the City reserves the right to dislocate the Vessel from time to time during this Agreement to accommodate other City uses of the premises for City festivals and similar events, as well as any necessary work to enlarge or otherwise improve the Nauticus pier facility or the entrance to the Nauticus basins. In addition, the City reserves the right to close off the Nauticus basins and any other docking areas if required to accommodate naval vessels or cruise ships. The City will attempt to provide an alternative docking area, if available, for the Vessel during such dislocation(s), but the City does not guarantee the provision of such alternative docking area. Such dislocation(s) shall not affect the obligation of Rover Marine to pay fees to the City, except as otherwise provided by this Agreement or as agreed to in writing by the parties. Rover Marine shall allow the City to use the Vessel up to three (3) times per year at dates and times agreed upon by the parties.

3. **TERM.** This Agreement shall commence on the date that is thirty (30) days from the effective date of the ordinance duly adopted by Norfolk City Council approving this Docking Agreement ("Commencement Date"), and shall terminate five (5) years from the Commencement Date, unless sooner terminated by either party pursuant to this Agreement.

4. **FEES AND CHARGES.** Rover Marine agrees to pay to the City fees for the use of the berthing area in accordance with Norfolk City Code Section 24.1-7 as amended, during the term of this Agreement, such fees to be in the amount of six thousand dollars (\$6,000.00) annually, in monthly payments of five hundred dollars (\$500.00) as well as any other fees required by the City Code. Additionally, Nauticus will receive booking fees in accordance with Exhibit C. Fees for each month of the term of this Agreement shall be due and payable by the 10<sup>th</sup> day of the following month to the Director. During periods of dislocation of the Vessel of ten (10) or more consecutive days by the City, monthly fees shall be forgiven for the month in which dislocation occurs. However, it is understood by the parties that it is not the City's intention to dislocate the Vessel unnecessarily. If Rover Marine fails to pay the fees when due, and such fees remain in arrears for more than fifteen (15) days, the City may without further notice, and at its sole option, terminate this Agreement, and Rover Marine shall immediately thereafter surrender the premises.

5. **VESSEL OPERATIONS.** The parties agree- that Rover Marine operations are limited to docking and departures and boarding and disembarking passengers. The City will permit ingress and egress to the premises for Rover Marine personnel and passengers.

Refueling and major maintenance and repairs are prohibited at the premises; however, repairs may be undertaken with the permission of the Director. Rover Marine may use the trash compactor on site for its trash removal needs. Nauticus will have a professionally produced display and brochure rack on board the Vessel. Rover Marine will also have a designated rack near the Nauticus ticket sales area. The parties agree that all signage or advertising by Rover Marine shall be subject to approval by the Director.



6. **OPERATION AND SCHEDULE.** Rover Marine agrees to operate the Vessel as a tour boat primarily to the Norfolk Naval Base. A schedule of all arrivals and departures shall be timely filed with the Director. Subject to the approval of the Director, Rover Marine reserves the right to schedule sailings so as to maximize public participation.

Rover Marine Agrees to limit its private charter operation to 20% of the total annual revenue of its tour boat operation. Any regularly scheduled tour purchased by one group will be considered a private charter. The following special events shall not be included when calculating the 20% of total revenue: Lighted Boat Parade, New Year's Eve, Naval Base Christmas Lights and fireworks displays.

7. **UNITED STATES COAST GUARD APPROVAL.** Rover Marine must maintain current documentation for the vessel as follows:

U.S.C.G. License of Active Captain of vessel  
U.S.C.G. Letter of Stability with expiration date U.S.C.G.  
Certificate of Inspection with expiration date  
Vessel documentation

Copies of above documentation shall be forwarded to the Director.

8. **COMPLIANCE WITH APPLICABLE LAW.** Rover Marine agrees to operate all of its vessels in strict compliance with all applicable federal, state and local laws and regulations, in particular the Americans with Disabilities Act ("ADA"). To the extent required by the ADA, or any other law or regulation, Rover Marine shall be responsible for insuring that proper access is provided to all of its vessels. The failure to comply with any federal, state or local law or regulation shall be grounds for immediate termination of this Agreement.

9. **FOOD AND BEVERAGE SALES.** Should Rover Marine provide food service on its vessels as part of its public tour boat operations between Nauticus and the

Norfolk Naval Base, all food service shall comply with state and local health regulations, shall be subject to City and state sales taxation and shall be accurately reported to the City. Food service that is hot buffet style, plated meal, or hors d'oeuvre function will not be marketed to individuals as part of ticket price.

10. **MISCELLANEOUS.** When appropriate, the City will include the passenger tour boat operation in its normal tourism and marketing programs. Rover Marine agrees to provide and distribute a brochure, conduct advertising, make direct mailings and actively market the passenger tour boat operation during the term of this Agreement.

Nothing in this Agreement shall in any way be construed to constitute an agency or employment relationship between the City and Rover Marine, it being the intention of the parties hereto that Rover Marine shall at all times be an independent contractor.

In the event that any provision of this Agreement is determined to be in conflict with any provision of any other agreement existing as of the date of this Agreement to which the City is a party, the provisions of this Agreement shall be of no force and effect to the extent of any such conflict.

11. **EXCLUSIVITY.** To the extent permitted by law, and subject to any existing docking agreement to which the City is a party, the City agrees not to provide berthing space in the Nauticus area to any vessels used for the same purposes as the Vessel, as long as Rover Marine provides a quality operation, as determined by the City in its sole discretion. Notwithstanding anything in this agreement to the contrary, the City shall be permitted to offer programs and engage in other earned income activities on the Elizabeth River, which utilize vessels that provide specific subject matter tours which do not conflict with Rover Marine's stated purpose as set forth in this Agreement.



12. **INSURANCE AND INDEMNIFICATION.** Rover Marine shall secure and shall maintain at all times during the term of this Agreement, Protection and Indemnity Insurance, with a company approved and licensed to conduct business in the Commonwealth of Virginia, in not less than the amount of Five Million Dollars (\$5,000,000.00) (\$1 million primary and \$4 million excess) for the loss of life, bodily injury, and personal injury to persons injured aboard the Vessel, or elsewhere, including members of the crew if such injury is deemed to be the responsibility of Rover Marine, and property damages for liability for loss of, or damage to the property on board, insofar as the Collision Clause in the Hull Policy does not apply, arising out of any one event or occurrence, including the loading, unloading operation of any watercraft, or the adjoining ways, piers, docks and all other land based operations of Rover Marine, Inc., used to conduct public water transportation.

By executing this Agreement, Rover Marine confirms that the Protection and Indemnity Insurance Policy provides full coverage for all expenses related to the removal, marking or destroying of any vessel or watercraft that sinks in private waters or obstructs any waterway, or constitutes a menace to navigation, and that coverage will be kept in force during the term of this Agreement.

Rover Marine confirms that it has presently in effect a policy covering the accidental discharge of fuel oil or other pollution-like substances into the water to a limit of Five Million Dollars (\$5,000,000.00) (\$1 million primary and \$4 million excess) per occurrence, and that this coverage will be kept in full force and effect during the term of this Agreement.

Rover Marine further confirms that the cost of litigation is covered whether

against the Vessel (in rem) or against the owner (in personam) by Protection and Indemnity Insurance Policy, and that coverage will be kept in force during the term of this Agreement.

By executing this Agreement Rover Marine confirms to the City that the Vessel is seaworthy, will be maintained as seaworthy throughout the term of this Agreement and will be used for legal purposes only. The City of Norfolk has the right to request a United States Coast Guard inspection of the Vessel at any time and to receive results of any and all inspections made by the United States Coast Guard during the term of this Agreement,

The Protection and Indemnity Insurance Policy will include coverage for all waters in which Rover Marine operates the Vessel, and provide coverage for all the months of all the years during the term of this Agreement when the Vessel is in use, including those months the Vessel is being readied for service or being prepared for lay-ups.

The parties agree that the City of Norfolk will not be responsible to Rover Marine nor to any other person or entity for any damages to the hulls of any vessels or watercraft. All damages to the hull, equipment, machinery, stores, provisions, furnishing, boats, as well as equipment not owned by Rover Marine which is installed on the Vessel for the use provided and other items usually included within the Hull Insurance Policy are the total responsibility of Rover Marine, including the loss of income arising from any type of hull damages.

By executing this Agreement Rover Marine confirms to the City that its Hull Insurance Policy includes coverage under the deliberate damage (Pollution Hazard) clause and that coverage will be kept in full force during the term of this Agreement.

Rover Marine also agrees to purchase and retain in force during the term of this Agreement Workers Compensation and Employers Liability Insurance on a statutory basis,



including all maritime coverages that are necessary to comply with all laws, rules and regulations pertaining to Workers Compensation and Employers Liability Insurance coverages arising out of all Rover Marine activities, either on land or water.

Rover Marine also agrees to provide the City evidence of Automobile Insurance of no less than One Million Dollars (\$1,000,000.00) Combined Single Limits and One Million Dollars (\$1,000,000.00) Uninsured Motorist including hired and non-owned automobiles for all automobiles either owned, leased, rented or used by others on behalf of Rover Marine, placed with an insurance company licensed and approved to conduct business within the Commonwealth of Virginia. A certificate of insurance will be provided to the City upon execution of this Agreement and on its annual renewal dates.

Rover Marine also agrees to provide the City, evidence of Commercial General Liability for no less than One Million Dollars (\$1,000,000.00) Combined Single Limit, with coverage for bodily injury, property damage, and personal injury covering its operations and placed with an insurance company licensed and approved to conduct business within the Commonwealth of Virginia.

The parties acknowledge and agree that Rover Marine, Inc. may, at its sole discretion satisfy any or all of the insurance requirements of this Agreement through inclusion in one or more insurance policies maintained by Rover Marine as manager of the Vessel's operations.

The parties agree that the City will be named as an additional insured on all insurance policies and coverages set forth in this Agreement, including but not limited to Protection and Indemnity Commercial General Liability, the Water Quality Insurance Syndicate coverage. Certificates of Insurance and Policy endorsement reflecting all required

insurance policies and coverages will be sent to the City of Norfolk, in care of the Director, prior to the commencement of this Agreement. The certificates and Endorsements will also reflect a thirty (30) day prior notice of cancellation or non-renewal to be given the City of Norfolk in writing by the insurance company (ies).

Rover Marine agrees to defend, indemnify and hold the City of Norfolk, its officers, employees, and agents harmless from and against all damages, fees, fines, expenses of any kind whatsoever arising from and including all claims, suits, actions or proceedings arising from the Vessel's operations,

13. **FORCE MAJEURE.** Any act required to be done by either party may be excused or the time for performance extended by any delay caused by an act of God, war, civil disturbance, fire, casualty or similar occurrence.

14. **INDEPENDENT CONTRACTOR.** Rover Marine and its officers, employees and agents shall be independent contractors and shall not be considered to be employees of the City for any purpose whatsoever.

15. **TERMINATION OF AGREEMENT.** If either party shall fail to perform or comply with the terms or conditions of this Agreement and such failure to perform or non-compliance shall continue unremedied for ten (10) days after written notice sent by the other party, unless a longer time period is agreed in writing by the parties, this Agreement may be terminated by either party.

16. **NON-ASSIGNMENT.** Rover Marine may not assign in whole or in part any of the rights or privileges conferred by this Agreement, unless approved and agreed in writing by the City, such approval by the City not to be unreasonably withheld.



Notwithstanding any assignment approved and agreed by the City, Rover Marine shall remain bound and liable for any breach or failure to perform committed by the assignee.

17. **NOTICES.** All notices, demands and requests required to be given or which may be given hereunder shall be in writing and shall be deemed to have been properly given (a) in the case of the City, if sent by United States registered or certified mailed, postage, prepaid, addressed to City, City Manager, City Hall Building, Room 1101, 810 Union Street, Norfolk, Virginia 23510, with a copy to the City Attorney, City Hall Building, Room 900, 810 Union Street, Norfolk, Virginia 23510; and (b) in the case of Rover Marine if sent by United States registered or certified mail, postage repaid to Rover Marine, Inc., Post Office Box 3125, Norfolk, Virginia 23514.

18. **CONFLICT OF INTEREST.** Rover Marine, on behalf of its officers and employees, as well as any persons who could be affected by Chapter 22, Title 2.1 of the code of Virginia, Section 2.1-639.1 et seq., known as the State and Local Government Conflict of Interests Act, hereby certifies by executing this Agreement that it has diligently inquired of those persons set forth above whether any such person' is within the purview of the State and Local Government Conflict of interests Act and further certifies that as a result of said inquiry all requirements of the State and Local Government Conflict of Interests Act have been complied with by Rover Marine, Inc. and such persons.

19. **ENTIRE AGREEMENT.** This Agreement may not be amended except by writing signed by both parties hereto. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior oral and written understandings and agreements relating to this subject matter.

20. **SEVERABILITY.** All provisions of this Agreement shall be applicable only to the extent that they do not violate applicable law, and are intended to be limited to the extent necessary So that they will not render this, Agreement invalid, illegal, or unenforceable under any applicable law. If any provision of this Agreement shall be held invalid, illegal or unenforceable, the validity, legality or enforceability of all other provisions of this Agreement shall not be affected.

21. **GOVERNING LAW.** Except to the extent pre-empted by federal law, this Agreement shall be governed by the laws of the Commonwealth of Virginia. To the extent permitted by law, any action brought to enforce any right or obligation hereunder shall be subject to the exclusive jurisdiction of the courts of the Commonwealth of Virginia.

IN WITNESS WHEREOF, the parties have caused this wilting to be executed by their duly authorized officers.

**CITY OF NORFOLK**

By: \_\_\_\_\_  
Marcus D. Jones  
City Manager

Attest:

\_\_\_\_\_  
City Clerk

**ROVER MARINE, INC.**

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary



Content Approved:

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Deputy City Manager

Approved as to Form & Correctness:

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Deputy City Attorney

**Exhibit A**

**Schedule  
Rover Marine, Inc., Vessel**

**Tours commence: February 27, 2010**

**March**

2pm Every Day, except Mondays

**Spring**

(April - Late May)

11am and 2pm Every Day

**Summer Schedule**

(Late May - Labor Day)

11am, 2pm and 5:30pm Every Day

**Fall Schedule**

(Day after Labor Day - October)

11am and 2pm Every Day

**November and December**

2pm Every Day, except Mondays

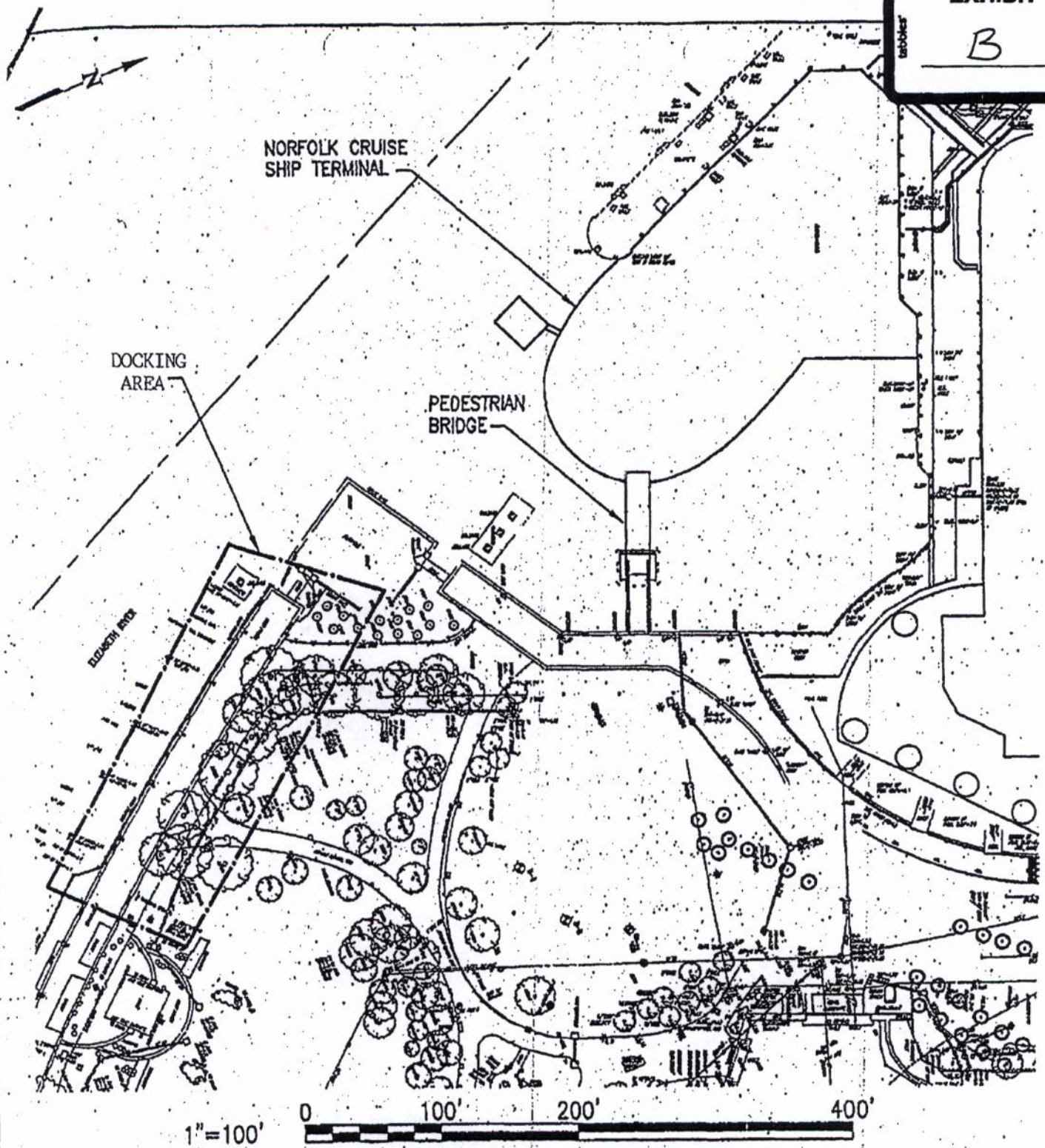
Off season: one tour daily; more offered based on demand

Special Events tours: Lighted Boat Parade, New Year's Eve, Naval Base Christmas Lights and private charters



EXHIBIT

B



DATUM: NAVD 88

APPLICANT: CITY OF NORFOLK

VICTORY ROVER  
BERTHING FACILITY

OVERALL SITE PLAN

CLARK-NEXSEN  
Architects & Engineering

6160 KEMPSPVILLE CIRCLE, SUITE 200A NORFOLK, VIRGINIA

IN: ELIZABETH RIVER

CITY: NORFOLK

DATE: MARCH 28, 2005

SHEET 2 OF 8

**Exhibit C**

**Rate Schedule and Booking Fees  
To Nauticus  
Rover Marine, Inc.  
Vessel**

**GROUP RATES**

15 Person Minimum  
Advance Reservations Required

Adults \$15  
Children \$9 (under 12)

**SPECIAL PACKAGES**

**The Big Ticket**

One Day Admission to Nauticus, Tour of the Battleship Wisconsin, Cruise aboard the Victory  
Rover, Boxed Lunch,  
10% - 20% Banana Pier Gift Shop Discount

Group Rate: \$32.00 Adults    \$25.50 Children

**Two For the Sea**

Enjoy Admission to Nauticus, a tour of the Battleship Wisconsin and a  
Two Hour Cruise aboard the Victory Rover for one low price.

Group Rate: \$23 Adults    \$16.50 Children

Tour Operator Rates Available



